

NTSB Order No. EA-4945

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of February, 2002

Respondent .

Respondent, pro se, appeals the Order Entering Judgment on the Pleadings of Chief Administrative Law Judge William E. Fowler, Jr., issued sua sponte in lieu of a hearing on December 26, 2000.¹ By that decision the law judge affirmed the revocation of respondent's control tower operator (CTO) certificate pursuant to section 65.12(a) of the Federal Aviation

7428

Regulations ("FARs") because of respondent's 1997 conviction on federal narcotics charges (possession with intent to distribute heroin).² We deny the appeal.

The law judge affirmed the Administrator's order of revocation in light of respondent's admission of the narcotics conviction. On appeal, respondent argues, by reference to the Black's Law Dictionary definition of "qualification," that the law judge erred by affirming revocation pursuant to section 65.12(a). Respondent appears to contend that although he made a mistake, there is no nexus between his narcotics conviction and his ability to execute his responsibilities as a CTO certificate holder. Respondent also argues, without elaboration, that the Administrator abused her discretion in revoking his CTO certificate because his offense "was not aircraft-related" and that revocation "constitutes multiple punishment" in violation of the Double Jeopardy clause of the Fifth Amendment of the United

² FAR § 65.12 -- 14 C.F.R. Part 65 -- states:

§ 65.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

* * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

* * * *

States Constitution.³

Respondent's arguments are unavailing, for as we stated in Administrator v. Uridel:

That an aircraft was not involved in the underlying criminal offense is of no moment. Respondent's convictions were for activities evidencing participation in commercial drug activity. This shows that he lacks the care, judgment, and responsibility required of a certificate holder. See Administrator v. Piro, NTSB Order No. EA-4049 at 3-4 (1993), aff'd, 66 F.3d 335 (9th Cir. 1995). Revocation for such violations found under FAR sections 61.15(a)(2) and 65.12(a)(2) is consistent with policy and precedent. See, e.g., Administrator v. Trupej, NTSB Order No. EA-4661 (1998).

NTSB Order No. EA-4772 at 3 (1999). See also Administrator v. Guslander, NTSB Order No. EA-4431 (1996) (because revocation of an FAA-issued certificate is remedial, not punitive, the Fifth Amendment is no bar to such actions arising from criminal narcotics convictions).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's order upholding the Administrator's

Order of Revocation of respondent's CTO certificate is affirmed.

³ The Administrator has filed a late reply brief accompanied by a motion for an enlargement of time, opposed by respondent, explaining that the Administrator's counsel miscalculated the due date for filing her reply brief. Respondent identifies no prejudice that would result from our accepting the Administrator's reply brief filed within a week of its proper due date, and so we grant the Administrator's motion. See 49 C.F.R. § 821.48(d); Administrator v. Smith, NTSB Order No. EA-4088 at 3-4 (1994) (accepting a respondent's late reply brief in the absence of prejudice to the Administrator).

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.